

FILED MAR 3 1987

By Parker

H B. No. 116

HOUSE REPRESENTATIVES

1987 MAR 13 AM 11:41

A BILL TO BE ENTITLED

AN ACT

relating to the misapplication of certain construction funds held in trust and criminal penalties for such misapplication.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 162.004, Property Code is amended to read as follows:

(a) This chapter does not apply to:

(1) a bank, savings and loan, or other lender;

(2) a title company or other closing agent; or

(3) a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement (~~receipts under a construction contract if the full contract amount is covered by a corporate surety payment bond~~).

SECTION 2. Section 162.031, Property Code is amended to read as follows:

Sec. 162.031. Misapplication of Trust Funds. (a) Except as provided by Subsection (b), a trustee who, intentionally or knowingly (~~with intent to defraud~~), directly or indirectly retains, uses, disburses, or otherwise diverts trust funds without first fully paying all obligations incurred by the trustee to the beneficiaries of the trust funds has misapplied the trust funds.

(b) It is an affirmative defense to prosecution or other action brought under Subsection (a) that the trust funds not paid to the beneficiaries of the trust were used by the trustee to pay the trustee's actual expenses directly related to the construction or repair of the improvement or have been retained by the trustee, after notice to the beneficiary, as a result of the trustee's reasonable belief that the

1 beneficiary is not entitled to such funds (~~A-trustee-may-use~~  
2 ~~trust-funds-to-pay-the-trustee's-reasonable-overhead-expenses-that-are~~  
3 ~~directly-related-to-the-construction-or-repair-of-the-improvement~~). .

4 SECTION 3. Section 162.032(b), Property Code, is amended to  
5 read as follows:

6 (b) A trustee who misapplies trust funds in violation of  
7 this chapter commits:

8 (1) a Class B misdemeanor if the amount of the  
9 misapplied trust funds is at least \$250 but less than \$1000;

10 (2) a Class A misdemeanor if the amount of the  
11 misapplied trust funds is at least \$1000 but less than \$5000;

12 (3) a felony of the third degree if the amount of  
13 the misapplied trust funds is at least \$5000 but less than  
14 \$20,000;

15 (4) a felony of the second degree if the amount of  
16 the misapplied trust funds is \$20,000 or more (~~amounting-to~~  
17 ~~\$250-or-more-commits-an-offense-punishable-by-imprisonment-in-the~~  
18 ~~Texas-Department-of-Corrections-for-not-more-than-10-years~~). .

19 SECTION 4. (a) The change in law made by this Act applies  
20 only to the punishment for an offense committed on or after the  
21 effective date of this Act. For purposes of this section, an  
22 offense is committed before the effective date of this Act if any  
23 element of the offense occurs before the effective date.

24 (b) An offense committed before the effective  
25 date of this Act is covered by the law in effect when the offense  
26 was committed, and the former law is continued in effect for this  
27 purpose.

28 SECTION 5. The importance of this legislation and the  
29 crowded condition of the calendars in both houses create an  
30 emergency and an imperative public necessity that the  
31 constitutional rule requiring bills to be read on three several  
32 days in each house be suspended, and this rule is hereby  
33 suspended.

# HOUSE COMMITTEE REPORT

1987 APR -06 AM 9:50  
HOUSE OF REPRESENTATIVES

1st. Printing

By Parker

H.B. No. 1160

## A BILL TO BE ENTITLED

### AN ACT

relating to the misapplication of certain construction funds held in trust and criminal penalties for such misapplication.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 162.004, Property Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) a bank, savings and loan, or other lender;

(2) a title company or other closing agent; or

(3) a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement [~~receipts-under-a-construction--contract--if--the--full contract-amount-is-covered-by-a-corporate-surety-payment-bond~~].

SECTION 2. Section 162.031, Property Code, is amended to read as follows:

Sec. 162.031. MISAPPLICATION OF TRUST FUNDS. (a) Except as provided by Subsection (b), a trustee who, intentionally or knowingly [~~with-intent-to-defraud~~], directly or indirectly retains, uses, disburses, or otherwise diverts trust funds without first fully paying all obligations incurred by the trustee to the beneficiaries of the trust funds has misapplied the trust funds.

(b) It is an affirmative defense to prosecution or other action brought under Subsection (a) that the trust funds not paid to the beneficiaries of the trust were used by the trustee to pay

1 the trustee's actual expenses directly related to the construction  
2 or repair of the improvement or have been retained by the trustee,  
3 after notice to the beneficiary, as a result of the trustee's  
4 reasonable belief that the beneficiary is not entitled to such  
5 funds [~~A--trustee--may--use--trust--funds--to--pay--the--trustee's~~  
6 ~~reasonable--overhead--expenses--that--are--directly--related--to--the~~  
7 ~~construction-or-repair-of-the-improvement~~].

8 SECTION 3. Section 162.032(b), Property Code, is amended to  
9 read as follows:

10 (b) A trustee who misapplies trust funds in violation of  
11 this chapter commits:

12 (1) a Class B misdemeanor if the amount of the  
13 misapplied trust funds is at least \$250 but less than \$1000;

14 (2) a Class A misdemeanor if the amount of the  
15 misapplied trust funds is at least \$1000 but less than \$5000;

16 (3) a felony of the third degree if the amount of the  
17 misapplied trust funds is at least \$5000 but less than \$20,000;

18 (4) a felony of the second degree if the amount of the  
19 misapplied trust funds is \$20,000 or more [~~amounting-to-\$250-or~~  
20 ~~more-commits-an-offense-punishable-by--imprisonment--in--the--Texas~~  
21 ~~Department-of-Corrections-for-not-more-than-10-years~~].

22 SECTION 4. (a) The change in law made by this Act applies  
23 only to the punishment for an offense committed on or after the  
24 effective date of this Act. For purposes of this section, an  
25 offense is committed before the effective date of this Act if any  
26 element of the offense occurs before the effective date.

27 (b) An offense committed before the effective date of this

1 Act is covered by the law in effect when the offense was committed,  
2 and the former law is continued in effect for this purpose.

3 SECTION 5. The importance of this legislation and the  
4 crowded condition of the calendars in both houses create an  
5 emergency and an imperative public necessity that the  
6 constitutional rule requiring bills to be read on three several  
7 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Gib Lewis  
Speaker of the House of Representatives

4/1/87  
(date)

Sir:

We, your COMMITTEE ON JUDICIAL AFFAIRS,

to whom was referred HB 1160 have had the same under consideration and beg to report  
(measure)  
back with the recommendation that it

- (x) do pass, without amendment.
- ( ) do pass, with amendment(s).
- ( ) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (x)yes ( ) no      An actuarial analysis was requested. ( ) yes (x)no

An author's fiscal statement was requested. ( ) yes (x)no

The Committee recommends that this measure be placed on the ~~(Local)~~ or ~~(Consent)~~ Calendar.

This measure ( ) proposes new law. (x)amends existing law.

House Sponsor of Senate Measure \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Hury, Ch.	✓			
Rangel, V.C.	✓			
Perry, C.B.O.				✓
Hudson, S.	✓			
Luna, G.	✓			
Parker	✓			
Schoolcraft	✓			
Smithee				✓
Thompson, S.	✓			

Total  
7 aye  
0 nay  
0 present, not voting  
2 absent

James Lury  
CHAIRMAN  
Theresa Calfee  
COMMITTEE COORDINATOR

## BILL ANALYSIS

By: Parker

H.B. 1160

### COMMITTEE ON JUDICIAL AFFAIRS

#### BACKGROUND INFORMATION

Under Chapter 162, Texas Property Code, all funds borrowed by an owner or paid to a contractor are "trust funds" for payment of persons who provide labor or materials to the construction project. When contractors or subcontractors use construction funds for other purposes, parties involved in the construction project are almost always damaged. However, Chapter 162 has serious drawbacks as a civil or criminal enforcement tool to address misapplication of funds: at least one court of appeals has held that a trustee's specific intent to defraud must be proved beyond a reasonable doubt and that "reasonable overhead" is, essentially, an overbroad, possibly unconstitutionally vague, term permitting escape from culpability. As a consequence, Chapter 162 is unsuccessful in its attempt to provide redress for such criminal behavior.

#### PURPOSE OF BILL

H.B. 1160, if enacted, would eliminate the necessity of proving a trustee's specific intent to defraud through misapplication of trust funds and delete the exception for reasonable overhead; this bill would also provide certain affirmative defenses and would restructure the classification of crime and attendant punishment.

#### RULE-MAKING AUTHORITY

This bill neither creates nor confers rule-making authority.

#### SECTION-BY-SECTION ANALYSIS

SECTION 1: Amends Section 162.004, Property Code, to except from the application of this chapter a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement and to remove as an exception receipts under a construction contract if the full contract amount is covered by a corporate surety payment bond.

SECTION 2: Amends Section 162.031, Property Code, to delete the requirement that, to constitute misapplication of funds, a trustee's action in diverting funds from the trust purpose must be accomplished with intent to defraud; to provide for affirmative defenses to Section 162.031(a) (i.e., that trust funds were used to pay the trustee's actual expenses directly related to construction or repair of the improvement or are held by the trustee on the reasonable belief the beneficiary is not entitled thereto after notice to the beneficiary); and to delete the provision that the trustee may use trust funds to pay his reasonable overhead expenses not directly related to construction or repair of the improvement.

SECTION 3: Amends Section 162.032(b), Property Code, to provide that offense under this chapter is a Class A or B misdemeanor or second or third-degree felony depending on the amount of trust funds misapplied; and deletes the current punishment provision which provides for up to ten years imprisonment in TDC where the amount misapplied is \$250 or more.

SECTION 4: The change in law applies only to punishment of those offenses committed on or after the Act's effective date; the occurrence of any element constitutes the commission of an offense. Prior offenses are governed by law in effect at commission, for which purpose former law is continued.

SECTION 5: Emergency clause.

#### SUMMARY OF COMMITTEE ACTION

H.B. 1160 was considered in a public hearing on April 1, 1987. The following individuals testified in favor of H.B. 1160: Robert Bass, Attorney representing the Lumberman's Association of Texas; Dick Hargis, Attorney representing the Texas Rental Association; and Jim Sewell, representing the Associated General Contractors - Texas Building Branch. No one testified on or against the bill. The Committee voted to report H.B. 1160 favorably to the House with the recommendation that it do pass by a record vote of 7 Ayes, 0 Nays, 0 PNV, and 2 absent.



# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

March 30, 1987

TO: Honorable James F. Hury, Jr., Chair  
Committee on Judicial Affairs  
House of Representatives  
Austin, Texas

In Re: House Bill No. 1160  
By: Parker

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1160 (relating to the misapplication of certain construction funds held in trust and criminal penalties for such misapplication) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, HES, JWH, LV

ADOPTED

MAY 6 1987

*Betty Murray*  
Chief Clerk  
House of Representatives

AMENDMENT NO. ①

BY *Russell*

1 Amend H.B. 1160 by adding a new Section 1 to read as follows  
2 and renumbering sections appropriately:

3 SECTION 1. Subchapter D, Chapter 53, Property Code, is  
4 amended by adding Section 53.085 to read as follows:

5 Sec. 53.085. AFFIDAVIT REQUIRED. (a) On request of the  
6 owner before final payment is made under a residential construction  
7 contract, an original contractor shall provide to the owner an  
8 affidavit stating that each subcontractor that has provided  
9 materials or labor for the residential construction under the  
10 contract has been paid in full for all labor and materials that the  
11 subcontractor has provided for the construction.

12 (b) A person commits an offense if the person makes a false  
13 or misleading statement in an affidavit under this section. An  
14 offense under this section is a Class A misdemeanor.

1997 MAY -7 AM 1:21  
HOUSE OF REPRESENTATIVES

ENGROSSED  
SECOND READING

By Parker

H.B. No. 1160

A BILL TO BE ENTITLED

AN ACT

relating to the protection of subcontractors and other  
beneficiaries of funds paid or held under construction contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 53, Property Code, is  
amended by adding Section 53.085 to read as follows:

Sec. 53.085. AFFIDAVIT REQUIRED. (a) On request of the  
owner before final payment is made under a residential construction  
contract, an original contractor shall provide to the owner an  
affidavit stating that each subcontractor that has provided  
materials or labor for the residential construction under the  
contract has been paid in full for all labor and materials that the  
subcontractor has provided for the construction.

(b) A person commits an offense if the person makes a false  
or misleading statement in an affidavit under this section. An  
offense under this section is a Class A misdemeanor.

SECTION 2. Section 162.004(a), Property Code, is amended to  
read as follows:

(a) This chapter does not apply to:

- (1) a bank, savings and loan, or other lender;
- (2) a title company or other closing agent; or
- (3) a corporate surety who issues a payment bond  
covering the contract for the construction or repair of the  
improvement [~~receipts-under-a-construction-contract-if-the-full~~

~~contract-amount-is-covered-by-a-corporate-surety-payment-bond~~].

SECTION 3. Section 162.031, Property Code, is amended to read as follows:

Sec. 162.031. MISAPPLICATION OF TRUST FUNDS. (a) Except as provided by Subsection (b), a trustee who, intentionally or knowingly ~~[with-intent-to-defraud]~~, directly or indirectly retains, uses, disburses, or otherwise diverts trust funds without first fully paying all obligations incurred by the trustee to the beneficiaries of the trust funds has misapplied the trust funds.

(b) It is an affirmative defense to prosecution or other action brought under Subsection (a) that the trust funds not paid to the beneficiaries of the trust were used by the trustee to pay the trustee's actual expenses directly related to the construction or repair of the improvement or have been retained by the trustee, after notice to the beneficiary, as a result of the trustee's reasonable belief that the beneficiary is not entitled to such funds ~~[A--trustee--may--use--trust--funds--to--pay--the--trustee's reasonable--overhead--expenses--that--are--directly--related--to--the construction-or-repair-of-the-improvement]~~.

SECTION 4. Section 162.032(b), Property Code, is amended to read as follows:

(b) A trustee who misapplies trust funds in violation of this chapter commits:

(1) a Class B misdemeanor if the amount of the misapplied trust funds is at least \$250 but less than \$1,000;

(2) a Class A misdemeanor if the amount of the misapplied trust funds is at least \$1,000 but less than \$5,000;

1           (3) a felony of the third degree if the amount of the  
2 misapplied trust funds is at least \$5,000 but less than \$20,000;

3           (4) a felony of the second degree if the amount of the  
4 misapplied trust funds is \$20,000 or more [~~amounting to \$250 or~~  
5 ~~more commits an offense punishable by imprisonment in the Texas~~  
6 ~~Department of Corrections for not more than 10 years~~].

7           SECTION 5. (a) The change in law made by this Act applies  
8 only to the punishment for an offense committed on or after the  
9 effective date of this Act. For purposes of this section, an  
10 offense is committed before the effective date of this Act if any  
11 element of the offense occurs before the effective date.

12           (b) An offense committed before the effective date of this  
13 Act is covered by the law in effect when the offense was committed,  
14 and the former law is continued in effect for this purpose.

15           SECTION 6. The importance of this legislation and the  
16 crowded condition of the calendars in both houses create an  
17 emergency and an imperative public necessity that the  
18 constitutional rule requiring bills to be read on three several  
19 days in each house be suspended, and this rule is hereby suspended.

# HOUSE ENGROSSMENT

1937 MAY -7 PM 3:47

HOUSE OF REPRESENTATIVES

By Parker

H.B. No. 1160

A BILL TO BE ENTITLED

AN ACT

relating to the protection of subcontractors and other beneficiaries of funds paid or held under construction contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.085 to read as follows:

Sec. 53.085. AFFIDAVIT REQUIRED. (a) On request of the owner before final payment is made under a residential construction contract, an original contractor shall provide to the owner an affidavit stating that each subcontractor that has provided materials or labor for the residential construction under the contract has been paid in full for all labor and materials that the subcontractor has provided for the construction.

(b) A person commits an offense if the person makes a false or misleading statement in an affidavit under this section. An offense under this section is a Class A misdemeanor.

SECTION 2. Section 162.004(a), Property Code, is amended to read as follows:

(a) This chapter does not apply to:

- (1) a bank, savings and loan, or other lender;
- (2) a title company or other closing agent; or
- (3) a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement [receipts-under-a-construction--contract--if--the--full

1 ~~contract-amount-is-covered-by-a-corporate-surety-payment-bond~~].

2 SECTION 3. Section 162.031, Property Code, is amended to  
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5 provided by Subsection (b), a trustee who, intentionally or  
6 knowingly [~~with-intent-to-defraud~~], directly or indirectly retains,  
7 uses, disburses, or otherwise diverts trust funds without first  
8 fully paying all obligations incurred by the trustee to the  
9 beneficiaries of the trust funds has misapplied the trust funds.

10 (b) It is an affirmative defense to prosecution or other  
11 action brought under Subsection (a) that the trust funds not paid  
12 to the beneficiaries of the trust were used by the trustee to pay  
13 the trustee's actual expenses directly related to the construction  
14 or repair of the improvement or have been retained by the trustee,  
15 after notice to the beneficiary, as a result of the trustee's  
16 reasonable belief that the beneficiary is not entitled to such  
17 funds [~~A--trustee--may--use--trust--funds--to--pay--the--trustee's~~  
18 ~~reasonable--overhead--expenses--that--are--directly--related--to--the~~  
19 ~~construction-or-repair-of-the-improvement~~].

20 SECTION 4. Section 162.032(b), Property Code, is amended to  
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27 misapplied trust funds is at least \$1,000 but less than \$5,000;

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2 misapplied trust funds is at least \$5,000 but less than \$20,000;

3           (4) a felony of the second degree if the amount of the  
4 misapplied trust funds is \$20,000 or more [~~amounting to \$250 or~~  
5 ~~more commits an offense punishable by imprisonment in the Texas~~  
6 ~~Department of Corrections for not more than 10 years~~].

7           SECTION 5. (a) The change in law made by this Act applies  
8 only to the punishment for an offense committed on or after the  
9 effective date of this Act. For purposes of this section, an  
10 offense is committed before the effective date of this Act if any  
11 element of the offense occurs before the effective date.

12           (b) An offense committed before the effective date of this  
13 Act is covered by the law in effect when the offense was committed,  
14 and the former law is continued in effect for this purpose.

15           SECTION 6. The importance of this legislation and the  
16 crowded condition of the calendars in both houses create an  
17 emergency and an imperative public necessity that the  
18 constitutional rule requiring bills to be read on three several  
19 days in each house be suspended, and this rule is hereby suspended.



# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

March 30, 1987

TO: Honorable James F. Hury, Jr., Chair  
Committee on Judicial Affairs  
House of Representatives  
Austin, Texas

In Re: House Bill No. 1160  
By: Parker

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1160 (relating to the misapplication of certain construction funds held in trust and criminal penalties for such misapplication) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, HES, JWH, LV

By: Parker (Senate Sponsor - Parker) H.B. No. 1160  
(In the Senate - Received from the House May 8, 1987; May 8, 1987, read first time and referred to Committee on Criminal Justice; May 20, 1987, reported favorably, as amended, by the following vote: Yeas 5, Nays 2; May 20, 1987, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	PNV	Absent
McFarland	x			
Henderson	x			
Farabee		x		
Glasgow	x			
Lyon		x		
Santiesteban	x			
Washington	x			

COMMITTEE AMENDMENT NO. 1

By: McFarland

Amend H.B. 1160 by deleting Section 1 and adding a new Section 1 to read as follows:

SECTION 1. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.085 to read as follows:

Sec. 53.085. AFFIDAVIT REQUIRED. (a) Any person who furnishes labor or materials for the construction of improvements on real property shall, upon request and as a condition of final payment for such labor or materials, provide to the requesting party, or its agent, an affidavit stating that such person has paid each of his subcontractors, laborers, or materialmen in full for all labor and materials provided to him for the construction. In the event that the person has not paid each of his subcontractors, laborers, or materialmen in full, the person shall state in the affidavit the amount owed and the name of each subcontractor, laborer, or materialman to whom such payment is owed.

(b) The seller of any real property shall, upon request by the purchaser or its agent prior to closing of the purchase of such real property, provide to such purchaser or its agent, a written affidavit stating that the seller has paid each of his contractors, laborers, or materialmen in full for all labor and materials provided to the seller for any construction of improvements on the real property and that the seller is not indebted to any person, firm or corporation by reason of any such construction. In the event that the seller has not paid each of his contractors, laborers, or materialmen in full, the seller shall state in the affidavit the amount owed and the name of each contractor, laborer, or materialman to whom such payment is owed.

(c) A person, including a seller, commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section. An offense under this section is a Class A misdemeanor.

A BILL TO BE ENTITLED  
AN ACT

relating to the protection of subcontractors and other beneficiaries of funds paid or held under construction contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.085 to read as follows:

Sec. 53.085. AFFIDAVIT REQUIRED. (a) On request of the owner before final payment is made under a residential construction contract, an original contractor shall provide to the owner an affidavit stating that each subcontractor that has provided materials or labor for the residential construction under the contract has been paid in full for all labor and materials that the subcontractor has provided for the construction.

(b) A person commits an offense if the person makes a false or misleading statement in an affidavit under this section. An offense under this section is a Class A misdemeanor.

SECTION 2. Section 162.004(a), Property Code, is amended to read as follows:

(a) This chapter does not apply to:

- (1) a bank, savings and loan, or other lender;
- (2) a title company or other closing agent; or
- (3) a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement ~~[receipts--under--a--construction--contract--if--the--full--contract--amount--is--covered--by--a--corporate--surety--payment--bond]~~.

SECTION 3. Section 162.031, Property Code, is amended to read as follows:

Sec. 162.031. MISAPPLICATION OF TRUST FUNDS. (a) Except as provided by Subsection (b), a trustee who, intentionally or knowingly ~~[with--intent--to--defraud]~~, directly or indirectly retains, uses, disburses, or otherwise diverts trust funds without first fully paying all obligations incurred by the trustee to the beneficiaries of the trust funds has misapplied the trust funds.

(b) It is an affirmative defense to prosecution or other action brought under Subsection (a) that the trust funds not paid to the beneficiaries of the trust were used by the trustee to pay the trustee's actual expenses directly related to the construction or repair of the improvement or have been retained by the trustee, after notice to the beneficiary, as a result of the trustee's reasonable belief that the beneficiary is not entitled to such funds ~~[A--trustee--may--use--trust--funds--to--pay--the--trustee's--reasonable--overhead--expenses--that--are--directly--related--to--the--construction--or--repair--of--the--improvement]~~.

SECTION 4. Section 162.032(b), Property Code, is amended to read as follows:

(b) A trustee who misapplies trust funds in violation of this chapter commits:

(1) a Class B misdemeanor if the amount of the misapplied trust funds is at least \$250 but less than \$1,000;

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(3) a felony of the third degree if the amount of the misapplied trust funds is at least \$5,000 but less than \$20,000;

(4) a felony of the second degree if the amount of the misapplied trust funds is \$20,000 or more ~~[amounting--to--\$250--or--more--commits--an--offense--punishable--by--imprisonment--in--the--Texas--Department--of--Corrections--for--not--more--than--10--years]~~.

SECTION 5. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

\* \* \* \* \*

Austin, Texas  
May 20, 1987

Hon. William P. Hobby  
President of the Senate

Sir:

We, your Committee on Criminal Justice to which was referred H.B. No. 1160, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, as amended, and be printed.

McFarland, Chairman

# SENATE FAVORABLY AS AMENDED COMMITTEE REPORT

Lt. Governor William P. Hobby  
President of the Senate

5/19/87 3:39 pm  
(date)/(time)

Sir:

We, your Committee on CRIMINAL JUSTICE to which was referred  
HB 1160 by G. Parker have on 5/19, 1987, had the same  
(measure) (sponsor) (hearing date)

under consideration and I am instructed to report it back with the recommendation (s) that it

☒ do pass with 1 amendments, and be printed

☐ do pass as amended, and be ordered not printed

☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☐ yes ☐ no

A revised fiscal note was requested. ☐ yes ☐ no

An actuarial analysis was requested. ☐ yes ☐ no

Considered by subcommittee. ☐ yes ☐ no

Senate Sponsor of House Measure C. Parker

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
McFarland, Chairman	<input checked="" type="checkbox"/>			
Henderson, Vice Chairman	<input checked="" type="checkbox"/>			
Farabee		<input checked="" type="checkbox"/>		
Glasgow	<input checked="" type="checkbox"/>			
Lyon		<input checked="" type="checkbox"/>		
Santiesteban	<input checked="" type="checkbox"/>			
Washington	<input checked="" type="checkbox"/>			
TOTAL VOTES	5	2	0	0

Mary Foley  
COMMITTEE CLERK

Bob McFarland  
CHAIRMAN

Paper clip the original and one copy of this form to the original bill along with the original and one copy of each committee amendment adopted. Retain one copy of this form for your file.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

May 12, 1987

TO: Honorable Bob McFarland, Chairman  
Committee on Criminal Justice  
Senate Chamber  
Austin, Texas

In Re: House Bill No. 1160,  
as engrossed  
By: Parker

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1160, as engrossed (relating to the protection of subcontractors and other beneficiaries of funds paid or held under construction contracts) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, HES, JWH, LV

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE**

March 30, 1987

TO: Honorable James F. Hury, Jr., Chair  
Committee on Judicial Affairs  
House of Representatives  
Austin, Texas

In Re: House Bill No. 1160  
By: Parker

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1160 (relating to the misapplication of certain construction funds held in trust and criminal penalties for such misapplication) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, HES, JWH, LV

# ADOPTED

MAY 25 1987

By: J. Parker (Comanche)

H.B. 1160

By: C. Parker (Orange)

SENATE FLOOR AMENDMENT NO. \_\_\_\_\_

Amend H.B. 1160 by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.085 to read as follows:

Sec. 53.085. AFFIDAVIT REQUIRED. (a) Any person who furnishes labor or materials for the construction of improvements on real property shall, upon request and as a condition of final payment for such labor or materials, provide to the requesting party, or its agent, an affidavit stating that such person has paid each of his subcontractors, laborers, or materialmen in full for all labor and materials provided to him for the construction. In the event that the person has not paid each of his subcontractors, laborers, or materialmen in full, the person shall state in the affidavit the amount owed and the name of each subcontractor, laborer, or materialman to whom such payment is owed.

(b) The seller of any real property shall, upon request by the purchaser or its agent prior to closing of the purchase of such real property, provide to such purchaser or its agent, a written affidavit stating that the seller has paid each of his contractors, laborers, or materialmen in full for all labor and materials provided to the seller for any construction of improvements on the real property and that the seller is not indebted to any person, firm or corporation by reason of any such construction. In the event that the seller has not paid each of

his contractors, laborers, or materialmen in full, the seller shall state in the affidavit the amount owed and the name of each contractor, laborer, or materialman to whom such payment is owed.

(c) A person, including a seller, commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section. An offense under this section is a Class A misdemeanor.

SECTION 2. Section 162.004<sup>(a)</sup>, Property Code, is amended to read as follows:

<sup>PP</sup>(a) This chapter does not apply to:

- <sup>PP</sup>(1) a bank, savings and loan, or other lender;
- (2) a title company or other closing agent; or
- (3) a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement ~~[receipts under a construction contract if the full contract amount is covered by a corporate surety payment bond]~~.

SECTION 3. Chapter 162, Property Code, is amended by adding Section 162.005 to read as follows:

<sup>P</sup> Sec. 162.005. Definitions.

In this chapter:

<sup>PP</sup>(1) A trustee acts with "intent to defraud" when he retains, uses, disburses, or diverts trust funds with the intent to deprive the beneficiaries of the trust funds.

<sup>PP</sup>(2) "Current or past due obligations" are those obligations incurred or owed by the trustee for labor or materials furnished in the direct prosecution of the work under the construction contract prior to the receipt of the trust funds and which are due and payable by the trustee no later than thirty days following receipt of the trust funds.



SENATE FLOOR AMENDMENT NO. \_\_\_\_

SECTION 4. Section 162.031, Property Code, is amended to read as follows:

Sec. 162.031. Misapplication of Trust Funds. (a) A ~~[Except---as---provided---by---Subsection---(b),---a]~~ trustee who, intentionally or knowingly or with intent to defraud, directly or indirectly retains, uses, disburses, or otherwise diverts trust funds without first fully paying all current or past due obligations incurred by the trustee to the beneficiaries of the trust funds, has misapplied the trust funds.

(b) It is an affirmative defense to prosecution or other action brought under Subsection (a) that the trust funds not paid to the beneficiaries of the trust were used by the trustee to pay the trustee's actual expenses directly related to the construction or repair of the improvement or have been retained by the trustee, after notice to the beneficiary who has made a request for payment, as a result of the trustee's reasonable belief that the beneficiary is not entitled to such funds or have been retained as authorized or required by Chapter 53 of the Property Code [A-trustee-may-use-trust-funds-to-pay-the-trustee's reasonable-overhead-expenses-that-are-directly-related-to-the construction-or-repair-of-the-improvement].

(c) It is also an affirmative defense to prosecution or other action brought under Subsection (a) that the trustee paid the beneficiaries all trust funds which they are entitled to receive no later than <sup>30</sup>thirty days following written notice to the trustee of the filing of a criminal complaint or other notice of a pending criminal investigation.

SECTION 5. Section 162.032<sup>b</sup>, Property Code, is amended to read as follows:

26/4

H. B. 1160

SENATE FLOOR AMENDMENT NO. \_\_\_\_

*§ 52.16.020 PENALTIES*

(a) A trustee who misapplies trust funds amounting to \$500 or more in violation of this chapter commits a Class A misdemeanor ~~[less than \$250 commits an offense punishable by confinement in jail for not more than two years and by a fine of not more than \$500 or by the confinement without the fine]~~.

(b) A trustee who misapplies trust funds amounting to \$500 [\$250] or more in violation of this chapter, with intent to defraud, commits a felony of the third degree ~~[an offense punishable by imprisonment in the Texas Department of Corrections for not more than 10 years]~~.

SECTION 6. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

AMEND THE CAPTION TO CONFORM  
TO THE BODY OF THE BILL

**ADOPTED**

MAY 25 1987

*Doty King*  
Secretary of the Senate

2  
#2

# SENATE AMENDMENTS

2nd Printing

By Parker

H.B. No. 1160

A BILL TO BE ENTITLED

AN ACT

relating to the protection of subcontractors and other beneficiaries of funds paid or held under construction contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.085 to read as follows:

Sec. 53.085. AFFIDAVIT REQUIRED. (a) On request of the owner before final payment is made under a residential construction contract, an original contractor shall provide to the owner an affidavit stating that each subcontractor that has provided materials or labor for the residential construction under the contract has been paid in full for all labor and materials that the subcontractor has provided for the construction.

(b) A person commits an offense if the person makes a false or misleading statement in an affidavit under this section. An offense under this section is a Class A misdemeanor.

SECTION 2. Section 162.004(a), Property Code, is amended to read as follows:

(a) This chapter does not apply to:

- (1) a bank, savings and loan, or other lender;
- (2) a title company or other closing agent; or
- (3) a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement [~~receipts-under-a-construction--contract--if--the--full~~]

1 ~~contract-amount-is-covered-by-a-corporate-surety-payment-bond~~].

2 SECTION 3. Section 162.031, Property Code, is amended to  
3 read as follows:

4 Sec. 162.031. MISAPPLICATION OF TRUST FUNDS. (a) Except as  
5 provided by Subsection (b), a trustee who, intentionally or  
6 knowingly [~~with-intent-to-defraud~~], directly or indirectly retains,  
7 uses, disburses, or otherwise diverts trust funds without first  
8 fully paying all obligations incurred by the trustee to the  
9 beneficiaries of the trust funds has misapplied the trust funds.

10 (b) It is an affirmative defense to prosecution or other  
11 action brought under Subsection (a) that the trust funds not paid  
12 to the beneficiaries of the trust were used by the trustee to pay  
13 the trustee's actual expenses directly related to the construction  
14 or repair of the improvement or have been retained by the trustee,  
15 after notice to the beneficiary, as a result of the trustee's  
16 reasonable belief that the beneficiary is not entitled to such  
17 funds [~~A--trustee--may--use--trust--funds--to--pay--the--trustee's~~  
18 ~~reasonable--overhead--expenses--that--are--directly--related--to--the~~  
19 ~~construction-or-repair-of-the-improvement~~].

20 SECTION 4. Section 162.032(b), Property Code, is amended to  
21 read as follows:

22 (b) A trustee who misapplies trust funds in violation of  
23 this chapter commits:

24 (1) a Class B misdemeanor if the amount of the  
25 misapplied trust funds is at least \$250 but less than \$1,000;

26 (2) a Class A misdemeanor if the amount of the  
27 misapplied trust funds is at least \$1,000 but less than \$5,000;

1           (3) a felony of the third degree if the amount of the  
2 misapplied trust funds is at least \$5,000 but less than \$20,000;

3           (4) a felony of the second degree if the amount of the  
4 misapplied trust funds is \$20,000 or more [~~amounting to \$250 or~~  
5 ~~more commits an offense punishable by imprisonment in the Texas~~  
6 ~~Department of Corrections for not more than 10 years~~].

7           SECTION 5.   (a)   The change in law made by this Act applies  
8 only to the punishment for an offense committed on or after the  
9 effective date of this Act.   For purposes of this section, an  
10 offense is committed before the effective date of this Act if any  
11 element of the offense occurs before the effective date.

12           (b)   An offense committed before the effective date of this  
13 Act is covered by the law in effect when the offense was committed,  
14 and the former law is continued in effect for this purpose.

15           SECTION 6.   The importance of this legislation and the  
16 crowded condition of the calendars in both houses create an  
17 emergency and an imperative public necessity that the  
18 constitutional rule requiring bills to be read on three several  
19 days in each house be suspended, and this rule is hereby suspended.

By J. Parker

H.B. No. 1160

1                                    SENATE AMENDMENT NO. 1

2            Amend H.B. 1160 by striking all below the enacting clause and  
3 substituting the following:

4            SECTION 1. Subchapter D, Chapter 53, Property Code, is  
5 amended by adding Section 53.085 to read as follows:

6            Sec. 53.085. AFFIDAVIT REQUIRED. (a) Any person who  
7 furnishes labor or materials for the construction of improvements  
8 on real property shall, upon request and as a condition of final  
9 payment for such labor or materials, provide to the requesting  
10 party, or its agent, an affidavit stating that such person has paid  
11 each of his subcontractors, laborers, or materialmen in full for  
12 all labor and materials provided to him for the construction. In  
13 the event that the person has not paid each of his subcontractors,  
14 laborers, or materialmen in full, the person shall state in the  
15 affidavit the amount owed and the name of each subcontractor,  
16 laborer, or materialman to whom such payment is owed.

17            (b) The seller of any real property shall, upon request by  
18 the purchaser or its agent prior to closing of the purchase of such  
19 real property, provide to such purchaser or its agent, a written  
20 affidavit stating that the seller has paid each of his contractors,  
21 laborers, or materialmen in full for all labor and materials  
22 provided to the seller for any construction of improvements on the  
23 real property and that the seller is not indebted to any person,  
24 firm or corporation by reason of any such construction. In the

1 event that the seller has not paid each of his contractors,  
2 laborers, or materialmen in full, the seller shall state in the  
3 affidavit the amount owed and the name of each contractor, laborer,  
4 or materialman to whom such payment is owed.

5 (c) A person, including a seller, commits an offense if the  
6 person intentionally, knowingly, or recklessly makes a false or  
7 misleading statement in an affidavit under this section. An  
8 offense under this section is a Class A misdemeanor.

9 SECTION 2. Section 162.004, Property Code is amended to read  
10 as follows:

11 (a) This chapter does not apply to:  
12 (1) a bank, savings and loan, or other lender;  
13 (2) a title company or other closing agent; or  
14 (3) a corporate surety who issues a payment bond  
15 covering the contract for the construction or repair of the  
16 improvement [~~receipts--under--a--construction--contract--if--the--full~~  
17 ~~contract--amount--is--covered--by--a--corporate--surety--payment--bond~~].

18 SECTION 3. Chapter 162, Property Code, is amended by adding  
19 Section 162.005 to read as follows:

20 Sec. 162.005. Definitions

21 In this chapter:

22 (1) A trustee acts with "intent to defraud" when he retains,  
23 uses, disburses, or diverts trust funds with the intent to deprive  
24 the beneficiaries of the trust funds.

25 (2) "Current or past due obligations" are those obligations  
26 incurred or owed by the trustee for labor or materials furnished in  
27 the direct prosecution of the work under the construction contract



1 prior to the receipt of the trust funds and which are due and  
2 payable by the trustee no later than thirty days following receipt  
3 of the trust funds.

4 SECTION 4. Section 162.031, Property Code is amended to read  
5 as follows:

6 Sec. 162.031. MISAPPLICATION OF TRUST FUNDS. (a) A [Except  
7 as-provided-by-Subsection-(b)-a] trustee who, intentionally or  
8 knowingly or with intent to defraud, directly or indirectly  
9 retains, uses, disburses, or otherwise diverts trust funds without  
10 first fully paying all current or past due obligations incurred by  
11 the trustee to the beneficiaries of the trust funds, has misapplied  
12 the trust funds.

13 (b) It is an affirmative defense to prosecution or other  
14 action brought under Subsection (a) that the trust funds not paid  
15 to the beneficiaries of the trust were used by the trustee to pay  
16 the trustee's actual expenses directly related to the construction  
17 or repair of the improvement or have been retained by the trustee,  
18 after notice to the beneficiary who has made a request for payment,  
19 as a result of the trustee's reasonable belief that the beneficiary  
20 is not entitled to such funds or have been retained as authorized  
21 or required by Chapter 53 of the Property Code [A-trustee--may--use  
22 trust--funds--to--pay--the--trustee's--reasonable--overhead--expenses--that  
23 are--directly--related--to--the--construction--or--repair--of--the  
24 improvement].

25 (c) It is also an affirmative defense to prosecution or  
26 other action brought under Subsection (a) that the trustee paid the  
27 beneficiaries all trust funds which they are entitled to receive no

1 later than thirty days following written notice to the trustee of  
2 the filing of a criminal complaint or other notice of a pending  
3 criminal investigation.

4 SECTION 5. Section 162.032, Property Code, is amended to  
5 read as follows:

6 (a) A trustee who misapplies trust funds amounting to \$500  
7 or more in violation of this chapter commits a Class A misdemeanor  
8 [less--than--\$250--commits--an-offense-punishable-by-confinement-in  
9 jail-for-not-more-than-two-years-and-by-a-fine--of--not--more--than  
10 \$500-or-by-the-confinement-without-the-fine].

11 (b) A trustee who misapplies trust funds amounting to \$500  
12 [\$250] or more in violation of this chapter, with intent to  
13 defraud, commits a felony of the third degree [an--offense  
14 punishable-by-imprisonment-in-the-Texas-Department--of--Corrections  
15 for-not-more-than-10-years].

16 SECTION 6. (a) The change in law made by this Act applies  
17 only to the punishment for an offense committed on or after the  
18 effective date of this Act. For purposes of this section, an  
19 offense is committed before the effective date of this Act if any  
20 element of the offense occurs before the effective date.

21 (b) An offense committed before the effective date of this  
22 Act is covered by the law in effect when the offense was committed,  
23 and the former law is continued in effect for this purpose.

24 SECTION 7. The importance of this legislation and the  
25 crowded condition of the calendars in both houses create an  
26 emergency and an imperative public necessity that the  
27 constitutional rule requiring bills to be read on three several

H.B. No. 1160

1 days in each house be suspended, and this rule is hereby suspended.

2 C. Parker

3 SENATE AMENDMENT NO. 2

4 Amend the caption to conform to the body of the bill.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

May 12, 1987

TO: Honorable Bob McFarland, Chairman  
Committee on Criminal Justice  
Senate Chamber  
Austin, Texas

In Re: House Bill No. 1160,  
as engrossed  
By: Parker

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1160, as engrossed (relating to the protection of subcontractors and other beneficiaries of funds paid or held under construction contracts) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, HES, JWH, LV

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE**

March 30, 1987

TO: Honorable James F. Hury, Jr., Chair  
Committee on Judicial Affairs  
House of Representatives  
Austin, Texas

In Re: House Bill No. 1160  
By: Parker

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1160 (relating to the misapplication of certain construction funds held in trust and criminal penalties for such misapplication) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, HES, JWH, LV

F  
**ENROLLED**

H.B. No. 1160

1                                   AN ACT

2       relating to the protection of subcontractors and other  
3       beneficiaries of funds paid or held under construction contracts;  
4       providing a penalty.

5           BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6           SECTION 1. Subchapter D, Chapter 53, Property Code, is  
7       amended by adding Section 53.085 to read as follows:

8           Sec. 53.085. AFFIDAVIT REQUIRED. (a) Any person who  
9       furnishes labor or materials for the construction of improvements  
10      on real property shall, upon request and as a condition of final  
11      payment for such labor or materials, provide to the requesting  
12      party, or its agent, an affidavit stating that such person has paid  
13      each of his subcontractors, laborers, or materialmen in full for  
14      all labor and materials provided to him for the construction. In  
15      the event that the person has not paid each of his subcontractors,  
16      laborers, or materialmen in full, the person shall state in the  
17      affidavit the amount owed and the name of each subcontractor,  
18      laborer, or materialman to whom such payment is owed.

19           (b) The seller of any real property shall, upon request by  
20      the purchaser or its agent prior to closing of the purchase of such  
21      real property, provide to such purchaser or its agent, a written  
22      affidavit stating that the seller has paid each of his contractors,  
23      laborers, or materialmen in full for all labor and materials  
24      provided to the seller for any construction of improvements on the

1 real property and that the seller is not indebted to any person,  
2 firm, or corporation by reason of any such construction. In the  
3 event that the seller has not paid each of his contractors,  
4 laborers, or materialmen in full, the seller shall state in the  
5 affidavit the amount owed and the name of each contractor, laborer,  
6 or materialman to whom such payment is owed.

7 (c) A person, including a seller, commits an offense if the  
8 person intentionally, knowingly, or recklessly makes a false or  
9 misleading statement in an affidavit under this section. An  
10 offense under this section is a Class A misdemeanor.

11 SECTION 2. Section 162.004(a), Property Code, is amended to  
12 read as follows:

13 (a) This chapter does not apply to:

- 14 (1) a bank, savings and loan, or other lender;  
15 (2) a title company or other closing agent; or  
16 (3) a corporate surety who issues a payment bond  
17 covering the contract for the construction or repair of the  
18 improvement [~~receipts-under-a-construction--contract--if--the--full~~  
19 ~~contract-amount-is-covered-by-a-corporate-surety-payment-bond~~].

20 SECTION 3. Chapter 162, Property Code, is amended by adding  
21 Section 162.005 to read as follows:

22 Sec. 162.005. DEFINITIONS. In this chapter:

23 (1) A trustee acts with "intent to defraud" when he  
24 retains, uses, disburses, or diverts trust funds with the intent to  
25 deprive the beneficiaries of the trust funds.

26 (2) "Current or past due obligations" are those  
27 obligations incurred or owed by the trustee for labor or materials

1 furnished in the direct prosecution of the work under the  
2 construction contract prior to the receipt of the trust funds and  
3 which are due and payable by the trustee no later than 30 days  
4 following receipt of the trust funds.

5 SECTION 4. Section 162.031, Property Code, is amended to  
6 read as follows:

7 Sec. 162.031. MISAPPLICATION OF TRUST FUNDS. (a) A [Except  
8 as--provided--by--Subsection--(b)--a] trustee who, intentionally or  
9 knowingly or with intent to defraud, directly or indirectly  
10 retains, uses, disburses, or otherwise diverts trust funds without  
11 first fully paying all current or past due obligations incurred by  
12 the trustee to the beneficiaries of the trust funds, has misapplied  
13 the trust funds.

14 (b) It is an affirmative defense to prosecution or other  
15 action brought under Subsection (a) that the trust funds not paid  
16 to the beneficiaries of the trust were used by the trustee to pay  
17 the trustee's actual expenses directly related to the construction  
18 or repair of the improvement or have been retained by the trustee,  
19 after notice to the beneficiary who has made a request for payment,  
20 as a result of the trustee's reasonable belief that the beneficiary  
21 is not entitled to such funds or have been retained as authorized  
22 or required by Chapter 53 [A-trustee-may-use-trust-funds-to-pay-the  
23 trustee's-reasonable-overhead-expenses-that-are-directly-related-to  
24 the-construction-or-repair-of-the-improvement].

25 (c) It is also an affirmative defense to prosecution or  
26 other action brought under Subsection (a) that the trustee paid the  
27 beneficiaries all trust funds which they are entitled to receive no



1 later than 30 days following written notice to the trustee of the  
2 filing of a criminal complaint or other notice of a pending  
3 criminal investigation.

4 SECTION 5. Section 162.032, Property Code, is amended to  
5 read as follows:

6 Sec. 162.032. PENALTIES. (a) A trustee who misapplies  
7 trust funds amounting to \$500 or more in violation of this chapter  
8 commits a Class A misdemeanor [~~less-than-\$250-commits-an-offense~~  
9 ~~punishable-by-confinement-in-jail-for-not-more-than-two--years--and~~  
10 ~~by--a--fine-of-not-more-than-\$500-or-by-the-confinement-without-the~~  
11 ~~fine~~].

12 (b) A trustee who misapplies trust funds amounting to \$500  
13 [~~\$250~~] or more in violation of this chapter, with intent to  
14 defraud, commits a felony of the third degree [~~an--offense~~  
15 ~~punishable--by--imprisonment-in-the-Texas-Department-of-Corrections~~  
16 ~~for-not-more-than-10-years~~].

17 SECTION 6. (a) The change in law made by this Act applies  
18 only to the punishment for an offense committed on or after the  
19 effective date of this Act. For purposes of this section, an  
20 offense is committed before the effective date of this Act if any  
21 element of the offense occurs before the effective date.

22 (b) An offense committed before the effective date of this  
23 Act is covered by the law in effect when the offense was committed,  
24 and the former law is continued in effect for this purpose.

25 SECTION 7. The importance of this legislation and the  
26 crowded condition of the calendars in both houses create an  
27 emergency and an imperative public necessity that the

H.B. No. 1160

1 constitutional rule requiring bills to be read on three several  
2 days in each house be suspended, and this rule is hereby suspended.

H.B. No. 1160

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 1160 was passed by the House on May 7, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1160 on May 30, 1987, by a non-record vote.

---

Chief Clerk of the House

I certify that H.B. No. 1160 was passed by the Senate, with amendments, on May 25, 1987, by a viva-voce vote.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

H. B. No.

1160

By

Parker

A BILL TO BE ENTITLED

AN ACT

relating to the misapplication of certain construction funds held in trust and criminal penalties for such misapplication.

MAR 3 1987

1. Filed with the Chief Clerk.

MAR 11 1987

2. Read first time and Referred to Committee on

Judicial Affairs

APR 1 1987

3. Reported favorably (as amended) and sent to Printer at 11:09 am  
(as substituted)

APR 2 1987

APR 6 1987

4. Printed and distributed at 9:50 am

APR 6 1987

5. Sent to Committee on Calendars at 12:12 pm

MAY 6 1987

6. Read second time (amended) passed to third reading (failed) by (Non-Record Vote)  
(Record Vote of years, nays, present, not voting).

7. Motion to reconsider and table the vote by which H.B. \_\_\_\_\_ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of \_\_\_\_\_ years, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of \_\_\_\_\_ years, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting.

MAY 7 1987

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of \_\_\_\_\_ years, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. \_\_\_\_\_ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of \_\_\_\_\_ years, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

MAY 7 1987

12. Ordered Engrossed at 11:27 am

MAY 7 1987

13. Engrossed.

MAY 7 1987

14. Returned to Chief Clerk at 2:47 pm

MAY 8 1987

15. Sent to Senate.

Betty Murray

Chief Clerk of the House

MAY 8 1987

16. Received from the House

MAY 8 1987

17. Read, referred to Committee on CRIMINAL JUSTICE

MAY 20 1987

18. Reported favorably as amended

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

MAY 25 1987

21. Regular order of business suspended by unanimous  
(a viva voce vote.) consent  
(\_\_\_\_\_ years, \_\_\_\_\_ nays.)

MAY 25 1987

22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

23. Read second time amended passed to third reading by:  
(a viva voce vote.)  
Yeas \_\_\_\_\_ nays.)

MAY 25 1987

24. Caption ordered amended to conform to body of bill.

MAY 25 1987

25. Senate and Constitutional 3-Day Rules suspended by vote of 28 yeas,  
1 nays to place bill on third reading and final passage.

MAY 25 1987

26. Read third time and passed by  
(a viva voce vote.)  
Yeas \_\_\_\_\_ nays.)

OTHER ACTION:

OTHER ACTION:

Betty King  
Secretary of the Senate

5-25-87

27. Returned to the House.

MAY 25 1987

28. Received from the Senate (with amendments.)  
(~~no substituted~~)

MAY 30 1987

29. House (Concurred) (~~Refused to Concur~~) in Senate (Amendments) by a (Non-Record  
(Substitute) Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present,  
~~not voting~~).

30. Conference Committee Ordered.

MAY 30 1987

31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record  
Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

32. Ordered Enrolled at 4:20 pm

1987 MAY -7 PM 3:47

HOUSE OF REPRESENTATIVES

HOUSE OF REPRESENTATIVES

1987 MAY -7 AM 1:21

HOUSE OF REPRESENTATIVES

1987 APR -6 AM 9:50

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1160<sup>(1)</sup> was passed by the House on

May 7<sup>(2)</sup>, 1987, by a non-record vote;

and that the House concurred in Senate amendments to H.B. No. 1160  
on May 30<sup>(3)</sup>, 1987, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

\*\*\*\* Preparation: 'A;CT64;

I certify that H.B. No. 1160<sup>(1)</sup> was passed by the Senate, with

amendments, on May 25<sup>(2)</sup>, 1987, by a  
viva-voce vote.

\_\_\_\_\_  
Secretary of the Senate

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\*\*\*\* Preparation: 'A;CT15;